

# E-NEWSLETTER

## FCRA AMENDMENT BILL, 2020 – UNDERSTANDING AND ITS IMPACT



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The FCRA Amendment Bill, 2020 was tabled in the monsoon parliament session and was passed on Monday, 21<sup>st</sup> September, 2020. In what is being looked upon as a major blow to the FCRA registered charitable organizations, the Bill has imposed a slew of fresh restrictions by way of amendments in the Act. Although the Government might take a stand that such amendments were necessary in the wake of ongoing non-compliances such as non-filing of annual returns, maintenance of proper account and also because the annual inflow of foreign funds have almost doubled in past 10 years and many recipients have not utilized the same for the purpose for which it was received, but still certain such amendments might have a detrimental impact on the workings of such organizations.

Through this newsletter, Team NGOenabler is not only bringing before you a detailed compilation of all the amendments but also trying to develop an understanding of the impact of each amendment on the FCRA registered organizations.

### **DETAILED DISCUSSION ON RELEVANT AMENDMENTS AND ITS IMPACT**

#### **Amendment 1 : The Concept of second recipient has been foregone**

##### **Extract from the Bill:**

Section 7 of the FCR Act has been substituted by a new section which states:

“ No person who-

- (a) is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution,

shall transfer such foreign contribution to any other person.”

##### **Understanding of the amendment**

The amendment seems to prohibit the transfer of foreign contribution to any other person which implies that an organization registered or having prior permission under FCRA cannot make a sub-grant to any other organization from the foreign contributions received in its designated bank account even though such organization also holds a valid FCRA Registration or prior permission.

Unlike earlier, where such transfer was allowed by way of sub-grant to another FCRA registered organization, while working collaboratively for a particular project/program, such transfers by original recipient of funds have now been debarred even if the latter is FCRA registered.

##### **Impact of the Amendment**

Many NGOs which are working at grassroots levels and are dependent totally on large organizations will be adversely affected as the doors of foreign funding will now be closed for them. The operations of even large sized NGOs that were acting as the aggregator of funds and working collaboratively for various projects and programs, shall also be impacted severely. Overall, there will be a devastating impact on the community work and many social organizations might take a backstep.

## **DETAILED DISCUSSION ON RELEVANT AMENDMENTS**

### **AND ITS IMPACT**



#### **Amendment 2 : Capping for spend on administrative expenses from FCRA funds reduced**

##### **Extract from the Bill:**

"In Section 8 of the Principal Act, in sub-section (1), for the words "fifty percent", at both the places where they occur, the words "twenty percent" shall be substituted"

**Note:** Section 8 of the FCR Act, 2010 deals with the limit for defraying administrative expenses from the total foreign contribution received during the year.

##### **Understanding of the Amendment**

This implies the FCRA registered organizations will now have a reduced amount for spending towards administrative expenses and have to be very thoughtful while formulating the budget for projects to be executed from FCRA funds.

##### **Impact of the Amendment**

This although is a welcome step which will ensure the propriety of expenditures with focus on the main objective of the project, making it more purpose-oriented and meaningful. However, certain nature of projects which demand huge administrative expenses might now face difficulties in execution due to the cap on the spending.

#### **Amendment 3 : Aadhaar made mandatory for all on Governing Board**

##### **Extract from the Bill:**

A new Section 12A has been inserted in the FCR Act, as Power of Central Government to require Aadhaar number etc..as identification document:

" Notwithstanding anything contained in this Act, the Central Government may require that any person who seeks prior permission or prior approval under Section 11, or makes an application for grant of certificate under section 12, or, as the case may be, for renewal of certificate under section 16, shall provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called,....."

##### **Understanding of the amendment**

This implies that for all the members of the FCRA registered organization, have to hold a valid Aadhaar number and also mandatorily quote the same at the time of obtaining registration, renewal or prior permission under FCRA as the Government has made the Aadhar card, a sole identification document for the purposes of FCRA.

##### **Impact of the amendment**

There shall be no reasonable impact of this amendment. However the ones who are still waiting for any correction in their Aadhaar Card need to fast track the same as the date of FCRA renewal for most of the organizations is arriving soon.

## DETAILED DISCUSSION ON RELEVANT AMENDMENTS

### AND ITS IMPACT



#### **Amendment 4 : Suspension of Registration**

##### **Extract from the Bill:**

“ In Section 13 of the principal Act, in sub section (1), for the words “for such period not exceeding one hundred and eighty days as may be specified”, the words “for a period of one hundred and eighty days or such further period, not exceeding one hundred and eighty days, as may be specified” shall be substituted”

**Note:** **Section 13** of the FCR Act deals with the period for suspension of registration in case of any contravention of regulations.

##### **Understanding of the Amendment**

This implies that the Government has now been empowered to extend the period of suspension to more than six months, in case of any contravention of regulations by the FCRA registered organizations. As per the existing provisions, the period would not have exceeded six months. Thus, such amendment have given complete more powers to the Central Government without any recourse to the legal proceedings by the NGOs.

##### **Impact of the Amendment**

The organizations facing suspension might now have to wait for a longer period in order to resume operations and accept as well as utilize foreign funds, which might adversely impact their ongoing projects and programs.

#### **Amendment 5: FCRA Bank account with State Bank of India**

##### **Extract from the Bill:**

Section 17 of the FCR Act has been substituted by a new section which states:

“ Every person who has been granted certificate or prior permission under Section 12 shall receive foreign contribution only in an account designated as “FCRA Account” by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf.

Provided that such person may also open another FCRA account in any of the scheduled bank of his choice for the purpose of keeping or utilizing the foreign contribution which has been received from his FCRA Account in the specified branch of State Bank of India at New Delhi;

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilizing any foreign contribution received.....”

## **DETAILED DISCUSSION ON RELEVANT AMENDMENTS**

### **AND ITS IMPACT**



#### **Understanding of the Amendment**

Currently the FCRA registered organizations can open the designated bank account for receipt of foreign funds in any Core Banking Compliant Bank integrated with Public Financial Management System (PFMS). But with the latest amendment, such huge list of banks, for opening a designated bank account, has now been narrowed down to a specified branch of a single bank in a particular state of New Delhi.

However, no restrictions have been imposed on opening any number of utilization accounts which can be opened with any branch of scheduled bank in any state (but which in our opinion should be integrated with PFMS).

#### **Impact of the Amendment**

This amendment will only make the functioning of FCRA organizations registered in other states of the country, other than New Delhi, more cumbersome because it might be too inconvenient for them to correspond and communicate with the main branch and raise their concerns in case of any technical glitches in the system.

However, on the other hand, it will ensure greater transparency on the flow of foreign funds in to the country as each transaction will be under direct monitoring of the MHA Department.

#### **Amendment 6 : Inquiry before renewal of FCRA**

##### **Extract from the Bill:**

“ In Section 16 of the principal Act, in sub section (1), the following proviso is inserted, namely:-

Provided further that Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all the conditions specified in sub-section (4) of Section 12”

**Note:** Section 16 of the FCR Act deals with the renewal of registration under the Act.

##### **Understanding of the Amendment**

This implies that till now, the process of renewal for the FCRA Compliant organizations was like a cakewalk, which means if the annual returns or the quarterly intimations have been filed on time, the FCRA funds have not been mixed with local funds, intimations for change in bank account or change of governing body by more than 50% have been filed with the department and all other compliances are duly complied, the renewal was usually granted without further investigation or inquiry. But it seems that with the current amendment, all the powers have been concentrated in the hands of Central Government and even minor breach of law might be dealt with seriously and the organization might end up losing the registration or facing suspension.

##### **Impact of the Amendment**

However, we are of the opinion, that already enough monitoring is done under FCRA and with further tightening of norms, there will be a very little room for any non-compliance. So, over and above the existing norms, if any inquiry will now be done for renewal also, it will be cumbersome and harassing for at least those FCRA organizations which are fully compliant with the prevalent regulations.



## **DETAILED DISCUSSION ON RELEVANT AMENDMENTS**

### **AND ITS IMPACT**



#### **Amendment 7 : Voluntary surrender of FCRA Registration**

##### **Extract from the Bill:**

A new Section 14A has been inserted in the FCR Act, regarding surrender of certificate, providing that:

“On a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act, if , after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in sub-section (1) of Section 15.”

##### **Understanding of the Amendment**

With this amendment, the organizations who are no longer interested in FC receipts have an opportunity to surrender their registration by requesting the MHA Department to do so. However, the department before permitting such surrender, shall completely satisfy itself that the organization has not contravened any provisions of the Act and the management of foreign funds and assets created out of such contribution has been vested in competent authority as provided.

##### **Impact of the Amendment**

On one side it might be a boon for some who do not want to continue the registration but on the other, those who have huge asset base created out of foreign funds, might have to surrender it too, which will be no less than a setback for them.

##### **Conclusion**

The NGOs who are looked upon as a genuine partner to the Government in continuously ensuring the social development of the country, might now be discouraged to take a step forward due to such over-monitoring and over-regulation by the Government. It will be interesting to see how things turn up in upcoming days. But yes, the road ahead for FCRA registered organizations is tough and each organization now have to be self-compliant adopting the best international practices and standard operating procedures.

**Disclaimer:** This newsletter is only a compilation for developing an understanding of the topic and the opinion, if any, is purely that of the Team NGOEnabler.

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